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6 UNITED STATES DISTRICT COURT
7
8 FOR THE EASTERN DISTRICT OF WASHINGTON
9

10 ENRIQUE JEVONS as managing
11 member of Jevons Properties LLC,
12 JEVONS PROPERTIES LLC,
13 FREYA K. BURGSTALLER as
14 trustee of the Freya K. Burgstaller
15 Revocable Trust, JAY GLENN and
KENDRA GLENN,

16 Plaintiffs,

17
18 vs.

19 JAY INSLEE, in his official
20 capacity of the Governor of the
21 State of Washington and ROBERT
22 FERGUSON, in his official capacity
23 of the Attorney General of the State
of Washington,

24 Defendants.

Case No.:

COMPLAINT

25 Comes now, Richard M. Stephens and Stephens & Klinge LLP,
26 Attorneys at Law, on behalf of Plaintiffs Enrique Jevons as managing
27 member of Jevons Properties LLC, Jevons Properties LLC, Freya K.
28 COMPLAINT - 1

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425-453-6206

1 Burgstaller as trustee of the Freya Burgstaller Revocable Trust, Jay
2 Glenn and Kendra Glenn and allege as follows:

3 INTRODUCTION

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5 1. In the wake of the novel coronavirus, Defendant Governor Jay
6 Inslee, State of Washington, ("Defendant" or "Governor") State of
7 Washington hastily instituted a series of emergency proclamations
8 numbered as Proclamation 20-19 through 20-19.4 which prohibit people
9 who provide rental housing from exercising their contractual and
10 statutory remedies to evict tenants who have no right to remain in their
11 property. These includes tenants who refuse to pay rent for any or no
12 reason whatsoever, knowing that they cannot be evicted for not paying
13 rent and cannot be charged any late fees or be subject to an enforceable
14 debt or obligation that is collectable for being delinquent on rental
15 payments.
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21 2. Plaintiffs are sympathetic to tenants who have actually suffered
22 hardship due to the COVID-19 Pandemic. Plaintiffs have every
23 incentive to work with those tenants who do not have the financial
24 means to pay all or some portion of their rent. However, the
25 Proclamations actively undermine any such attempts at cooperation
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1 and allow tenants who have the ability to pay all or some of their rent
2 to ignore and ultimately escape their contractual obligations for the
3 foreseeable future regardless of whether they have been financially
4 harmed by the Pandemic.
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7 3. While many businesses have suffered as a result of the Pandemic,
8 the owners of rental property are the only people who are required by
9 any of the Governor's emergency proclamations to continue to provide a
10 good or service without charge. Stores and restaurants lost business
11 opportunities due to the Pandemic, but they were not required to
12 continue to provide goods or food to customers without an ability to
13 charge for the items they sold. The Governor's Proclamations regarding
14 eviction require housing providers to continue to provide rental housing
15 without an ability to insist that tenants pay for the privilege they
16 purchased when they voluntarily entered into their leases.
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19 4. Additionally, the owners of rental property are still required to pay
20 property taxes and, in many situations, pay for sewer, water, garbage
21 services even though the tenants in their property are not paying rent.
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24 5. The Proclamations violate the rights of people who provide rental
25 housing by destroying a fundamental feature of their contracts,
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1 oppressively placing on them the burden of providing free housing to
2 any and all tenants instead of properly spreading the burden on the
3 public as a whole, and essentially mandating that their property be
4 used for private use by tenants, a burden which is absolutely prohibited
5 by Article I, Section 16 of the Washington state constitution.
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8 **JURISDICTION AND VENUE**

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10 6. This action arises under the Article I, Section 9 and the Fifth and
11 Fourteenth Amendments to the United States Constitution and 42
12 U.S.C. § 1983. Accordingly, this Court has federal question jurisdiction
13 pursuant to 28 U.S.C. §§ 1331 and 1343. This action also seeks relief for
14 violation of state constitutional rights pursuant to Article I, Section 10
15 and Section 16 of the Washington state constitution (the “Contracts
16 Clause” and “Takings Clause,” respectively). This Court has jurisdiction
17 over these state law based claims through supplemental jurisdiction
18 pursuant to 28 U.S.C. § 1367(a). This Court has authority to award the
19 requested declaratory and injunctive relief pursuant to 28 U.S.C. § 2201,
20 28 U.S.C. § 1343(a) and 42 U.S.C. §§ 1983 and 1988(a); and award
21 recovery of attorney’s fees pursuant to 42 U.S.C. § 1988(b).
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1 7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1)
2 and (2) because a substantial part of the events giving rise to Plaintiff's
3 claims occurred in this district and all of the property that is the subject
4 of this action is situated in this district.
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7 **PARTIES**

8 8. Plaintiff Enrique Jevons is the managing member and owner of
9 Jevons Properties LLC which owns residential rental property rented to
10 tenants in Yakima, Washington. Mr. Jevons is a resident of Yakima
11 County.
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14 9. Plaintiff Freya K. Burgstaller is the trustee of the Freya K.
15 Burgstaller Revocable Trust, the owner of residential rental property
16 which is rented to tenants in Yakima, Washington. Freya Burgstaller is
17 a resident of Yakima County.
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20 10. Plaintiffs Jay and Kendra Glenn are the owners of residential
21 rental property which is rented to tenants in Yakima, Washington. The
22 Glenns are residents of Utah.
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24 11. Defendant Jay Inslee (Governor) is sued herein in his official
25 capacity as the Governor of the State of Washington, who is the
26 promulgator of the Proclamations and the executive officer with the
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1 responsibility to enforce his Proclamations. Because this case seeks only
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3 declaratory and injunctive relief, Jay Inslee is a “person” who can be
4 subject to suit under 42 U.S.C. §§ 1983 and 1988.

5 12. Robert Ferguson is sued in his official capacity as Attorney
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7 General of the State of Washington who has responsibility for and who
8 has undertaken responsibility for enforcing the Proclamations. Because
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10 this case seeks only declaratory and injunctive relief, Robert Ferguson
11 is a “person” who can be subject to suit under 42 U.S.C. §§ 1983 and
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13 1988.

14 STANDING

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16 13. Plaintiffs have standing because they own rental properties in
17 this Court’s district and are directly impacted by the Proclamations’
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19 restrictions on Plaintiffs’ businesses, livelihoods and property.

20 14. Plaintiffs have standing to bring their claims since they are
21 aggrieved by the Governor’s unconstitutional Proclamations, which
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23 have the effect of forcing Plaintiffs to bare alone a public burden by
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25 entirely destroying Plaintiffs’ ability to collect rent, exclude nonpaying
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27 or rule breaking tenants and/or otherwise use their properties as they
28 rightfully so choose.

FACTUAL ALLEGATIONS

A. Plaintiffs and their Property

15. Jevons Properties LLC owns properties which it rents to tenants in Yakima, Washington. Enrique Jevons is the owner and managing member of Jevons Properties LLC. One property which Jevons Properties LLC owns has a tenant which is several months behind in rent. Enrique understands that he cannot evict a tenant who is not paying rent because of the Governor's Proclamations.

16. The Freya K. Burgstaller Revocable Trust was created as its name suggests by Freya Burgstaller. Freya came to Yakima in the 1960s and found a home she wanted to purchase. However, the seller insisted that whoever bought the home had to also buy the seller's second home. Freya realized the only way to obtain the house she wanted was to acquire two homes and rent one to others. That is how she entered the rental property business.

17. Renting property is hard work and sometimes one needs to take on the unpleasant task of evicting a tenant. In March of 2020, Freya attempted to evict a tenant who had stopped paying rent and created enough noise in her unit that Freya's other neighboring tenant

1 repeatedly complained. During the eviction process, it became clear that
2 eviction was banned by the Governor's Proclamation in effect at the
3 time. So Freya is still forced to have a tenant in her property who is not
4 paying rent and who creates noise problems for other tenants. Freya's
5 hands are effectively tied.
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8 18. Plaintiffs Jay and Kendra Glenn own several properties which he
9 rents to tenants in Yakima. The Glenns have tenants who have not paid
10 rent for seven months. Nonetheless, the Glenns are still required to pay
11 sewer, water, and garbage services and pay taxes for unit from which he
12 is not recovering any rent.
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15 **B. The Outbreak of COVID-19**

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17 19. The global COVID-19 pandemic ("Pandemic") brought on by the
18 Novel Coronavirus has caused catastrophic and unprecedented
19 economic damage across the globe, and with it, significant loss of life
20 and fundamental changes to both world and national economies. The
21 Pandemic has turned the world upside-down, causing profound damage
22 to the lives of all Americans and to the national economy. To be sure,
23 State of Washington and U.S. officials have faced tremendous adversity
24 in planning, coordinating, and at times, executing effective nationwide
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1 and statewide policies to protect the general public's health, safety and
2 welfare during this time of crisis. However, the Proclamations, as well-
3 intentioned as they may be, have had an unlawful and disparate impact
4 on housing providers.
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7 20. In response to the outbreak in the State of Washington, on
8 February 29, 2020, Governor Inslee issued a "State of Emergency"
9 Order to address the threat of the spread of the Pandemic throughout
10 Washington's communities. Governor Inslee subsequently issued
11 Proclamation No. 20-25 on March 23, 2020, which, among other things,
12 mandated that "all individuals living in the State of Washington" were
13 to "stay home or at their place of residence except as needed to maintain
14 the continuity of operations of the critical infrastructure sectors and
15 other "essential services."
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20 C. The Governor's Eviction-Related Proclamations

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22 21. On March 18, 2020, Governor Inslee issued Proclamation 20-19.
23 In relevant part, the Order purported to suspend provisions of state law
24 that would allow the providers of residential rental housing to evict
25 tenants even if they were able to pay rent but chose not to do so. The
26 Proclamation stated it was to remain in effect until April 17, 2020.
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1 22. On April 16, 2020, Governor Inslee issued Proclamation No. 20-
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3 19.1 which remained in effect until June 4, 2020. This Proclamation,
4 like the others before it, has three provisions which Plaintiffs contend
5 are in violation of constitutional rights as explained below. Those
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7 provisions are:

8 a. A prohibition on evictions (Eviction Moratorium), which is not tied
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10 to anything related to the Pandemic. However, it is subject to
11 exceptions where the lessor (a) provides an affidavit that the eviction is
12 necessary to respond to a significant and immediate risk to the health,
13 safety, or property of others created by the resident; or (b) provides at
14 least 60 days' written notice of intent to (i) personally occupy the
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16 premises as a primary residence, or (ii) sell the property.
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18 b. A prohibition on imposing fees for late payment (Suspension of
19 Late Fees), regardless of whether the Pandemic has impacted the
20 tenant's ability to pay and the inability to treat unpaid rent as a debt or
21 financial obligation. The inability to treat unpaid debt as a financial
22 obligation of the tenant is lifted only if the lessor offers the tenant and
23 the tenant refused or failed to comply with, a repayment plan that was
24 reasonable based on the individual financial, health, and other
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1 circumstances of that resident. However, there is no corresponding
2 obligation of tenants to cooperate with the development of a repayment
3 plan and tenants may to provide information that would enable the
4 creation of a repayment plan that is reasonable based on the tenant's
5 financial, health and other circumstances.
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8 23. On June 2, 2020, Governor Inslee issued Proclamation 20-19.2,
9 which was to remain in effect until August 1, 2020. On July 24, 2020,
10 Governor Inslee issued Proclamation 20-19.3, which was to remain in
11 effect until October 15, 2020. On October 14, 2020, Governor Inslee
12 issued Proclamation 20-19.4, a true and correct copy of which is
13 attached hereto as Appendix A. It remains in effect until December 31,
14 2020. The restrictions described above are included in all of these
15 Proclamations with some variation in each.
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20 24. While purportedly intended to provide relief to tenants impacted
21 by the Pandemic, the Proclamations are not tailored to a tenant's actual
22 inability to pay rent and significantly (and needlessly) infringe on the
23 constitutional rights of housing providers within the State of
24 Washington. This action seeks a ruling that Proclamations 20-19
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1 through 20-19.4 are illegal and the enforcement of Proclamation 20-19.4
2 should be enjoined.
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4 25. Proclamation 20-19.4, among other things, prohibits housing
5 providers from initiating or continuing residential eviction proceedings
6 based upon non-payment of rent. While Proclamation 20-19.4 provides
7 no relief for housing providers and requires them to continue meeting
8 their contractual and statutory obligations as lessors, it completely
9 abrogates the material obligations of lessees and eliminates all the
10 contractual remedies housing providers ordinarily have when tenants
11 breach their lease provisions. Under the Proclamations, tenants may
12 continue to occupy their respective premises at no charge, utilizing the
13 water, power, trash, sewage, and other fees that the housing providers
14 must continue to pay without reimbursement. By stripping all remedies
15 away from owners – without requiring tenants to demonstrate an
16 inability to pay rent – the Proclamations create a legal disincentive for
17 tenants who can pay all or some of what they owe from doing so because
18 there is no recourse for such calculated behavior.
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26 26. The Proclamations fail to address how a housing provider would
27 be able to collect rent from those tenants who take advantage of the
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1 Eviction Moratorium. Indeed, the Governor has banned housing
2 providers from pursuing their primary remedy (eviction) needed to
3 mitigate damages where the tenant fails to pay rent and then went a
4 step further by proclaiming that such nonpayment could not be enforced
5 as a debt or legal obligation. Every month a housing provider is
6 prevented from renting its unit to a paying tenant is a month for which
7 the housing provider cannot mitigate any damages. This Eviction
8 Moratorium forces owners to allow tenants who have stopped paying
9 and to continue to occupy their units for many months and likely well
10 into 2021 and beyond. Because unpaid rent is declared to not be an
11 enforceable debt or obligation under the Proclamations, there is no hope
12 for housing providers to be made whole.

13 27. The impact of the Proclamations is thus particularly devastating
14 because housing providers are forced to give up collection of rent and
15 effectively give interest-free loans of an indefinite time period to tenants
16 regardless of whether those tenants have any Pandemic-related
17 inability to pay. The Proclamations also require housing providers to
18 financially support their tenants during the Pandemic by subsidizing
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1 tenants' rent, utilities and other charges without any support to the
2 housing provider.
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4 28. As set forth below, this action requests the Court to declare the
5 Proclamations in the 20-19 series illegal and unenforceable because
6 they violate the United States and Washington Constitutions, on the
7 grounds that they improperly interfere with Plaintiffs' contracts and
8 due process rights and constitute an improper uncompensated taking of
9 the fundamental property rights of Plaintiffs, and such taking is
10 unconstitutional because it is for the private use of tenants and not a
11 public use.
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16 29. If allowed to stand, the Proclamations will not only continue to
17 violate Plaintiff's rights under both the Washington and United States
18 Constitutions, but will continue to inflict massive and widespread
19 economic damage on housing providers throughout the State, while
20 unconstitutionally shifting the entire economic burden of the Pandemic
21 as it relates to housing onto the backs of owners of rental housing,
22 including Plaintiffs, who have already been financially impacted by the
23 Pandemic. Plaintiffs similarly rely on rental income to maintain and
24 secure their properties. Plaintiffs are also required to pay the
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1 substantial property taxes, utility fees and other assessments on their
2 respective properties, which taxes, fees and assessments rely on a flow
3 of rental income.
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5 30. Moreover, the Proclamations are not “narrowly tailored” to
6 further any compelling governmental interest. On the contrary, while
7 the Proclamations were ostensibly intended to protect tenants from
8 being evicted due to their inability to pay rent, this goal could have been
9 achieved by far less intrusive means, including, but not limited to: (a)
10 permitting the courts to hear each case on its own merits and fashion
11 relief appropriate to the specific positions of the affected housing
12 providers and tenants, thereby protecting tenants from immediate
13 eviction but also providing protection to housing providers from
14 excessive periods of non-payment; (b) requiring tenants to substantiate
15 the criteria for qualifying for protection under the Proclamations
16 through documentation or other evidence; (c) providing housing
17 providers an opportunity to challenge a tenant’s claimed qualification
18 for protection under the Proclamations; (d) providing tenants with the
19 means to pay rent in order to satisfy the State’s tenant protection goals,
20 without requiring housing providers owners to bear the burden of
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1 significant non-payment of rent; and/or (e) compensating housing
2 providers when a tenant fails to pay rent.
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4 31. Instead, the Proclamations remove any remedy for housing
5 providers when tenants do not pay rent (or violate rules) and they give
6 tenants a present sense that they are not contractually bound to pay
7 **any** portion of rent for an indefinite period of time. The Proclamations
8 prohibit any legal means by which housing providers, such as Plaintiffs,
9 can continue to collect rent from those with the ability to pay even a
10 portion of their rent.
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14 32. Accordingly, Plaintiffs bring this action challenging the
15 constitutionality of the Proclamations, which have deprived Plaintiffs of
16 their fundamental rights and liberties embodied in both the
17 Washington and United States Constitutions. In doing so, Plaintiffs
18 seek the following remedies:
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22 a. Equitable and injunctive relief to enjoin the Governor's and
23 Attorney General's enforcement of the Proclamations;
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25 b. Declaratory relief from this Court that the Proclamations violate
26 Plaintiffs' constitutional rights as follows:
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1 i. The Proclamations violate the Contracts Clause of Article I, Section
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3 10 of the United States Constitution and Article I Section 23 of the
4 Washington Constitution;

5 ii. The Proclamations violate the federal constitutional right to be
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7 free from arbitrary, capricious, unreasonable or unduly oppressive
8 regulations of their property inherent in the Due Process Clause
9 protection of the Fourteenth Amendment of the United States
10 Constitution;
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13 iii. The Proclamations violate the taking of property protection of the
14 Fifth Amendment to the United States Constitution and Article I,
15 Section of 16 of the Washington constitution in that the taking is
16 without just compensation and is for a private, not public, use;
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18 iv. And the Proclamations are illegal as violations of Plaintiff's
19 federal civil rights under 42 U.S.C. § 1983 of the Federal Civil Rights
20 Act ("Section 1983") because of the federal constitutional violations
21 inherent in the Proclamations which were undertaken under color of
22 state law; and
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26 c. Attorney's fees and costs for the work performed by Plaintiff's
27 counsel in this lawsuit in an amount according to proof; and
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1 d. For such other and further relief as this Court deems just and
2 appropriate.
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4 **FIRST CLAIM FOR RELIEF**

5 **Violation of the Contracts Clause, Art. 1, § 10 of the United States**
6 **Constitution (Declaratory Relief Under 42 U.S.C. § 1983)**
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8 33. Plaintiffs incorporate herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as
10 though fully set forth herein.
11

12 34. Because Defendants are sued only for prospective declaratory and
13 injunctive relief, they constitute “persons” who are potentially liable
14 under the Civil Rights Act, 42 U.S.C. Section 1983. *Hafer v. Melo*, 502
15 U.S. 21 (1991).
16

17 35. Any relief afforded to tenants that is justified by the public health
18 emergency, in order not to contravene Plaintiffs’ constitutional rights,
19 can only be of character appropriate to that emergency and granted
20 only upon reasonable conditions. *Home Bldg. & Loan Ass’n v. Blaisdell*,
21 290 U.S. 398, 445 (1934). In cases of leases, the Supreme Court has
22 observed that relief may be appropriate where “the relief afforded was
23 temporary and conditional; that it was sustained because of the
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1 emergency due to scarcity of housing; *and that provision was made for*
2 *reasonable compensation to the landlord during the period he was*
3 *prevented from regaining possession.” Id. at 441-442 (emphasis*
4 *added).*
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7 36. Here, however, the Proclamations are neither “appropriate,” nor
8 granted upon “reasonable conditions.” The relief afforded is neither
9 temporary nor conditional. Nor do the Proclamations provide for
10 “reasonable compensation” to housing providers. Indeed, the Eviction
11 Moratorium expressly allows tenants to remain in possession without
12 paying any rent during the emergency period. The Proclamations are
13 not reasonable or appropriate to any legitimate end. *Blaisdell*, 290 U.S.
14 at 438.
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17 37. The Proclamations have caused damage to Plaintiffs who have
18 no remedies available to them by which to recover the losses caused by
19 their tenants’ non-payment of rent.
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22 38. “To be sure, individual rights secured by the Constitution do not
23 disappear during a public health crisis.” *In re Abbott*, 954 F.3d 772, 784
24 (5th Cir. 2020). Fundamental and unalienable rights are by their very
25 nature “essential” – they are the same essential rights which led to the
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1 founding of this country and this state. For, “[h]istory reveals that the
2 initial steps in the erosion of individual rights are usually excused on
3 the basis of an ‘emergency’ or threat to the public. But the ultimate
4 strength of our constitutional guarantee lies in the unhesitating
5 application in times of crisis and tranquility alike.” *United States v.*
6 *Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring).

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10 39. “Emergency does not create power. Emergency does not increase
11 granted power or remove or diminish the restrictions imposed upon
12 power granted or reserved. The Constitution was adopted in a period of
13 grave emergency. Its grants of power to the federal government and its
14 limitations of the power of the States were determined in light of
15 emergency, and they are not altered by emergency. What power was
16 thus granted and what limitations were thus imposed are questions
17 which have always been, and always will be, the subject of close
18 examination under our constitutional system.” *Blaisdell*, 290 U.S. at
19 426.

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24 40. The Contracts Clause, Art. 1, § 10, of the United States
25 Constitution, provides: “No State shall . . . pass any . . . Law impairing
26 the Obligation of Contracts.” The Contracts Clause applies to cities and
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1 prohibits cities from enacting ordinances that substantially impair
2 Plaintiff's existing, lawful contracts.
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4 41. The Ninth Circuit Court of Appeals has ruled that Contracts
5 Clause violations are indeed actionable under 42 U.S.C. § 1983.
6 Specifically, the Ninth Circuit has stated: "The right of a party not to
7 have a State, or a political subdivision thereof, impair its obligations of
8 contract is a right secured by the first article of the United States
9 Constitution. A deprivation of that right may therefore give rise to a
10 cause of action under section 1983." *Southern California Gas Co. v. City*
11 *of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003).
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15 42. In determining whether a contractual impairment is substantial,
16 courts consider "the extent to which the law undermines the contractual
17 bargain, interferes with a party's reasonable expectations, and prevents
18 the party from safeguarding or reinstating his rights." *Sveen v. Melin*,
19 138 S.Ct. 1815, 1822 (2018). The eviction ban substantially impairs
20 residential leases because the ability to evict is a cornerstone of the
21 contractual bargain, destroys the housing providers' reasonable
22 expectations and completely prevents the owner from safeguarding his
23 or her investment and reinstating its rights to payment or possession.
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1 43. “Contracts ... are impaired within the meaning of the
2 Constitution (article I, § 10, cl. 1) whenever the right to enforce them by
3 legal process is taken away or materially lessened.” *Lynch v. United*
4 *States*, 292 U.S. 571, 580 (1934). And deprivation of the remedy to
5 enforce a contractual obligation has long remained a substantial
6 impairment. “[I]t is manifest that the obligation of the contract, and the
7 rights of the party under it, may, in effect, be destroyed by denying a
8 remedy altogether.” *Bronson v. Kinzie*, 42 U.S. 311, 317 (1843). That is
9 exactly what the Proclamations do.

14 44. If a court determines that a law works a substantial impairment,
15 it then considers “whether the state law is drawn in an ‘appropriate’
16 and ‘reasonable’ way to advance ‘a significant and legitimate public
17 purpose.’” *Sveen*, 138 S.Ct. at 1822 (quoting *Energy Reserves Grp., Inc.*
18 *v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983)). A law that
19 provides a “benefit to special interests” is not appropriate or reasonable.
20 *Id.* at 412.

24 45. Whereas here a law substantially impairs a contract, the public
25 entity bears the burden of showing that the impairment is both
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1 reasonable and necessary. *United States Trust Co. v. New Jersey*, 431
2 U.S. 1, 31 (1977).
3

4 46. A Contract Clause analysis follows three steps. *See RUI One*
5 *Corp. v. City of Berkeley*, 371 F.3d 1137, 1147 (9th Cir. 2004). First, a
6 court examines whether the law creates a “substantial impairment” of
7 contractual obligations. *Id.* (quoting *Allied Structural Steel Co. v.*
8 *Spannaus*, 438 U.S. 234, 244 (1978)). If yes, then the court asks
9 whether the government has a “significant and legitimate public
10 purpose” designed to solve a “broad and general social or economic
11 problem” as opposed to offering “a benefit to special interests.” *Id.*
12 (quoting *Energy Res. Group, Inc. v. Kan. Power & Light Co.*, 459 U.S.
13 400, 412 (1983)). If so, then the court asks whether the law “is based
14 upon reasonable conditions and is of a character appropriate to the
15 public purpose justifying the legislation’s adoption.” *Id.* (quoting *United*
16 *States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977)).
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23 47. The Eviction Moratorium causes a substantial impairment of
24 residential lease agreements by removing all practical remedies for
25 contractual violations. It offers a benefit to a particular group—
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1 residential tenants—at the expense of the housing providers, rather
2 than the public as a whole.
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4 48. A substantial impairment of a contract must be “tailored to the
5 emergency that it was designed to meet.” *Allied Structural Steel Co.*,
6 438 U.S. at 242. And it is unnecessary and unreasonable when “an
7 evident and more moderate course would serve [the state’s] purposes
8 equally well.” *United States Trust of New York*, 431 U.S. at 31. The
9 current Proclamation claims as its rationale the unemployment
10 prompted by Pandemic-related business shutdowns is likely to make it
11 difficult for tenants to pay rent.
12

13 49. But removal of the contractual remedy is not tailored to this
14 emergency. It prohibits evictions regardless of a tenant’s employment or
15 ability to pay. Not only is the contractual right to receive payment
16 jeopardized—a housing provider cannot evict a tenant for violations of a
17 lease unrelated to rent, such as rules related to the welfare of other
18 tenants.
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20 50. The Proclamations’ ban on rent collection is not tailored to the
21 emergency either. Housing providers are prohibited from treating
22 unpaid rent as an enforceable debt and bringing a breach-of-contract
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1 action. But the Governor's interests in preventing homelessness are not
2 furthered by preventing the housing provider from bringing an action to
3 recover overdue rent.
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5 51. Under these standards, the Proclamations violate the Contracts
6 Clause of the United States Constitution. The Eviction Moratorium
7 fundamentally overturns the contractual bargains struck between
8 Plaintiffs and their tenants by effectively relieving the tenants of their
9 obligation to pay rent and comply with other provisions of their leases
10 and leaving housing providers, like Plaintiffs, without any recourse for
11 an undetermined period of time. Under the Eviction Moratorium,
12 housing providers are required to allow tenants to remain on the
13 properties rent free for an unspecified duration of time, thus depriving
14 Plaintiffs of the opportunity to collect any portion of rent from their
15 current tenants, or otherwise rent their properties to tenants who can
16 pay rent. Such Proclamations are the quintessential "substantial"
17 impairment, as they "undermine the contractual bargain, interferes
18 with a party's reasonable expectations, and prevents the party from
19 safeguarding or reinstating his rights." *Sveen*, 138 S.Ct. at 1822. As a
20 result of the issuance and enforcement of the Proclamations,
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1 Defendants have violated Plaintiff's constitutional rights to the free use
2 of their properties. The Proclamations abrogate Plaintiff's contractual
3 rights in that they permit tenants to unilaterally violate the terms of
4 their leases, without the housing provider's consent.
5

6
7 52. The Eviction Moratorium further unilaterally rewrites all
8 residential leases within the State of Washington. The complete
9 obliteration of Plaintiffs' contracts and tenants' obligations to pay rent
10 under such contracts is not a reasonable way of achieving any
11 legitimate purpose. Accordingly, the contractual impairments
12 effectuated by the enactment and enforcement of the Proclamations
13 violate the Contracts Clause and are thus unconstitutional.
14

15
16 53. In applying the Proclamations to the Plaintiffs, the Governor has
17 acted under color of state law. The Governor's conduct has deprived
18 Plaintiffs of the rights, privileges, and immunities secured by the
19 United States Constitution and/or laws of the United States to which
20 Plaintiffs are and were legitimately entitled. The Attorney General
21 should not be allowed to enforce the current Proclamation.
22

23 54. Unless the Attorney General and Governor are enjoined and
24 restrained from enforcing or threatening to enforce the Proclamations,
25

1 Plaintiffs will be irreparably injured. Plaintiffs will be deprived of rights
2 guaranteed under the United States Constitution, and will continue to
3 suffer substantial loss of rents, profits, and good will, the nature and
4 extent of which will be extremely difficult or impossible to ascertain.
5

6
7 55. Finally, the Governor's conduct has required Plaintiffs to incur
8 attorneys' fees and costs of suit to bring this action, and Plaintiffs are
9 entitled to attorneys' fees and costs under 42 U.S.C. § 1983 *et seq.* and
10 42 U.S.C. § 1988(b).
11

12 **SECOND CLAIM FOR RELIEF**

13 **Violation of the Contracts Clause of Art. I, § 23 of the Washington** 14 **Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)** 15

16
17 56. Plaintiffs incorporate herein by reference each and every
18 allegation contained in the preceding paragraphs of this Complaint as
19 though fully set forth herein.
20

21
22 57. The Proclamations substantially impair Plaintiffs' rights and the
23 tenants' obligations under existing leases and/or rental agreements. By
24 allowing tenants to withhold rent payments, the State has unlawfully
25 impaired the tenants' contractual obligations, leaving no recourse for
26 housing providers, such as the Plaintiffs.
27

1 58. The Governor effectively seeks to destroy Plaintiffs' lease
2 agreements and contract rights and to shift the entire cost of providing
3 housing onto Plaintiffs. In doing so, the Governor substantially impairs
4 the obligations of the existing lease and/or rental agreements without
5 justification, and in direct violation of the Contracts Clause.
6
7

8 59. Plaintiffs desire an immediate declaration of their rights arising
9 out of all the facts and circumstances alleged herein and the
10 concomitant obligations of its tenants to pay rent. Such declaration is
11 necessary and appropriate at this time inasmuch as Plaintiffs are being
12 irreparably injured and will continue to suffer irreparable injury in the
13 form of lost constitutional rights, and loss of use of their properties until
14 a declaration of their rights is made.
15
16
17

18 60. Additionally, unless the Governor is enjoined and restrained from
19 enforcing or threatening to enforce the Proclamations, Plaintiffs will be
20 irreparably injured. Plaintiffs will be deprived of rights guaranteed
21 under the Washington Constitution, and will continue to suffer
22 substantial loss of rents and profits, the nature and extent of which will
23 be extremely difficult or impossible to ascertain. Plaintiffs have no
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1 adequate remedy at law to prevent or redress the irreparable injury
2 alleged herein.
3

4 61. Plaintiffs seek a declaratory judgment of rights and obligations
5 under the Washington Uniform Declaratory Judgment Act, Chapter
6 7.24 Rev. Code Wa. and Civil Rule 57. An actual dispute exists between
7 Plaintiffs and the Defendants whose interests are genuinely opposing in
8 nature. These disputed interests are direct and substantial. A judicial
9 determination can provide a final and conclusive resolution as to the
10 parties' rights and responsibilities.
11
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13

14 **THIRD CLAIM FOR RELIEF**

15
16 **Violation of the Takings Clause of the Fifth Amendment to the**
17 **United States Constitution**

18 **(Declaratory relief under 42 U.S.C. § 1983)**
19

20 62. Plaintiffs incorporate herein by reference each and every
21 allegation contained in the preceding paragraphs of this Complaint as
22 though fully set forth herein.
23

24 63. The Takings Clause, present in the Fifth Amendment to the
25 United States Constitution, provides that private property shall not "be
26
27
28

1 taken for public use, without just compensation.” Fifth Amendment to
2 the U.S. Constitution.
3

4 64. The purpose of the Takings Clause is to “bar Government from
5 forcing some people alone to bear the public burdens which, in all
6 fairness and justice, should be borne by the public as a whole.” *Lingle v.*
7 *Chevron Corp.*, 544 U.S. 528, 537 (2005) (quoting *Armstrong v. United*
8 *States*, 364 U.S. 40, 49 (1960)). Government action may violate the
9 Takings Clause where it is “the functional equivalent [of] the classic
10 taking in which government directly appropriates private property or
11 ousts the owner from his domain.” *Id.* at 539.
12
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14
15

16 65. The United States Supreme Court has repeatedly acknowledged
17 that takings liability under the Fifth Amendment to the United States
18 Constitution may be redressed under 42 U.S.C. § 1983.
19

20 66. The Proclamations referenced herein fall squarely within the
21 “physical occupation” line of cases the United States Supreme Court has
22 held constitute “per se” categorical takings for which the government is
23 required to pay “just compensation.” The Proclamations force housing
24 providers who own the rented property to accept the occupation of
25 tenants without any payment of rent or compliance with rules
26
27
28

1 concurrent with the occupancies. The Proclamations do nothing to
2 protect Plaintiffs from losses they have and will undoubtedly continue
3 to sustain when such tenants are unable to pay their rental obligations
4 in the future or to compensate Plaintiffs for the rent they could have
5 obtained from new paying tenants if the State did not indefinitely ban
6 evictions. This is exacerbated by the fact that housing providers still
7 have obligations to pay for sewer, water and garbage removal for the
8 nonpaying tenant. The Governor's Proclamation has thus eliminated
9 the housing providers' fundamental constitutional right to exclude
10 nonpaying or rule-breaking tenants from their respective properties. As
11 Justice Thurgood Marshall proclaimed in *Loretto v. Teleprompter*
12 *Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982), "property law has
13 long protected an owner's expectation that he will be relatively
14 undisturbed at least in the possession of his property" and "[t]o require,
15 as well, that the owner permit another to exercise complete dominion
16 literally adds insult to injury." As the Supreme Court acknowledged,
17 "our cases uniformly have found a taking to the extent of the occupation,
18 without regard to whether the action achieves an important public
19 benefit or has only minimal impact on the owner." *Id.* at 435.

1 67. The Proclamations and the enforcement thereof have caused a
2 regulatory and physical taking of Plaintiffs properties without just
3 compensation in violation of the Takings Clause of the Fifth
4 Amendment to the U.S. Constitution.
5

6
7 68. Not only do the Proclamations take property interests of
8 Plaintiffs without payment of just compensation, the taking of these
9 property interests are not for public use but for the private use of
10 tenants. In fact, residential tenancies are for private uses and the public
11 has no right to use them for any purpose. Because the taking of
12 Plaintiffs' property by the Proclamations is for private and not public
13 use, it is barred by the Fifth and Fourteenth Amendments to the United
14 States Constitution.
15

16
17 70. Plaintiffs have no adequate remedy at law and will suffer serious
18 and irreparable harm to their constitutional rights unless the Governor
19 is enjoined from implementing and enforcing the Eviction Moratorium.
20

21
22 71. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
23 declaratory relief and temporary, preliminary, and permanent
24 injunctive relief invalidating and restraining enforcement of the
25 Eviction Moratorium.
26

1 72. Plaintiff found it necessary to engage the services of private
2 counsel to vindicate the rights of its members under the law. Plaintiffs
3 are therefore entitled to an award of attorney's fees pursuant to 42
4 U.S.C. § 1988.
5

6
7 **FOURTH CLAIM FOR RELIEF**

8 **Violation of the Takings Clause of Art. I, § 16 of the Washington**
9 **Constitution (Declaratory relief under Rev. Code of Wa. 7.24.010)**
10

11 73. Plaintiffs incorporate herein by reference each and every
12 allegation contained in the preceding paragraphs of this Complaint as
13 though fully set forth herein.
14

15 74. Article I, Section 16 of the Washington Constitution provides that
16 just compensation be provided prior to any taking of property for public
17 use and prohibits taking of private property for private use.
18

19 75. Washington courts have routinely held that the Washington
20 Constitution provides just compensation to property owners when their
21 land is taken because the law seeks to bar the government from forcing
22 some people alone to bear public burdens which, in all fairness and
23 justice, should be borne by the public as a whole. "The talisman of a
24 taking is government action which forces some private persons alone to
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1 shoulder affirmative public burdens, ‘which, in all fairness and justice,
2 should be borne by the public as a whole.’” *Mission Springs, Inc. v. City*
3 *of Spokane*, 134 Wn.2d 947, 964 (1998) (quoting *Armstrong v. United*
4 *States*, 364 U.S. 40, 49 (1960)).

7 76. Moreover, the principle behind the concept of just compensation
8 for property taken for public use is to put the owner in as good a
9 position financially as he or she would have occupied if his or her
10 property had not been taken. *Central Puget Sound Regional Transit*
11 *Authority v. Heirs and Devisees of Eastey*, 135 Wn. App. 446, 455
12 (2006).

15 77. Prohibiting Plaintiffs from rightfully collecting rent from their
16 tenants in the State of Washington, in exchange for the tenants’ lawful
17 possession of Plaintiffs’ properties, despite other compliance measures
18 being taken to satisfy the public health interests at stake and to
19 financially compensate those affected by COVID-19, violates Plaintiffs’
20 fundamental Constitutional rights.

24 78. Additionally, the taking of Plaintiffs’ property interests are not
25 for public use at all, but for the private use of tenants. No member of
26 the public, much less the public as a whole, has a right to use those

1 tenancies or avoid paying rent for occupying a property. Unlike the
2 Fifth Amendment to the United States Constitution, Article I, Section
3 16 of the Washington constitution is explicit: “Private property shall
4 not be taken for private use.” *See also State ex rel. Washington State*
5 *Convention and Trade Center v. Evans*, 136 Wn.2d 811 (1998) (“The
6 constitution prohibits the taking of private property for a private use.”)
7 The Proclamations are in violation of the explicit prohibition in Article I,
8 Section 16 of the Washington state constitution on the state taking
9 private property for private use.
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14 79. Plaintiffs seek a declaratory judgment of rights and obligations
15 under the Washington Uniform Declaratory Judgment Act, Chapter
16 7.24 Rev. Code of Wa. and Civil Rule 57. An actual dispute exists
17 between Plaintiffs and Defendants whose interests are genuinely
18 opposing in nature. These disputed interests are direct and substantial.
19 A judicial determination can provide a final and conclusive resolution as
20 to the parties’ rights and responsibilities.
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FIFTH CLAIM FOR RELIEF

**Violation of the Due Process Clause of the Fourteenth
Amendment (Declaratory relief under 42 U.S.C. § 1983)**

80. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

81. The Due Process Clause of the Fourteenth Amendment to the United States Constitution stands as an additional constitutional hurdle to the Governor's enactment of the Proclamations. The Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests," including the "specific freedoms protected by the Bill of Rights" and "those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,'" such as rights in property. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (quoting *Moore v. E. Cleveland*, 431 U.S. 494, 502 (1977)). Thus while the "police power" of the government may be broad, it "must be exercised within a limited ambit and is subordinate to constitutional

1 limitations.” *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of*
2 *Kansas*, 294 U.S. 9 613, 622 (1935).
3

4 82. The State’s police power therefore does not afford “unrestricted
5 authority to accomplish whatever the public may presently desire.”
6 *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of Kansas*, 294 U.S.
7 613, 622 (1935). Instead, “[i]t is the governmental power of self-
8 protection and permits reasonable regulation of rights and property in
9 particulars essential to the preservation of the community from injury.”
10 *Id.*
11
12
13

14 83. Therefore, “a regulation that fails to serve any legitimate
15 governmental objective may be so arbitrary or irrational that it runs
16 afoul of the Due Process Clause.” *Lingle*, 544 U.S. at 542; *Rea v.*
17 *Matteucci*, 121 F.3d 483, 485 (9th Cir. 1997) (under Due Process Clause
18 a “federal interest remains in protecting the individual citizen from
19 state action that is wholly arbitrary or irrational”). Furthermore, a law
20 violates the Due Process Clause if it “fails to provide a person of
21 ordinary intelligence fair notice of what is prohibited, or is so standard
22 less that is authorizes or encourages seriously discriminatory
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1 enforcement.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253
2 (2012) (quoting *United States v. Williams*, 25 553 U.S. 285, 306 (2008)).
3

4 84. The Proclamations and enforcement thereof, violate Plaintiffs’
5 substantive due process rights secured by the Fourteenth Amendment
6 to the U.S. Constitution. Under the Due Process Clause of the
7 Fourteenth Amendment, no State shall “deprive any person of life,
8 liberty, or property, without due process of law.” The fundamental
9 liberties protected by the Due Process Clause include most of the rights
10 enumerated in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145,
11 147-149 (1968). In addition, these liberties extend to personal choices
12 central to individual dignity and autonomy, including personal choices
13 regarding one’s choice of livelihood. Additionally, housing providers are
14 denied access to the courts for relief, which is another due process
15 violation.
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22 85. The Proclamations, which expressly deprive Plaintiffs of their
23 rights and liberties in the use of their properties, did not afford
24 Plaintiffs a constitutionally adequate hearing to present their case to
25 disallow the Eviction Moratorium, and specifically the unreasonable
26 prohibition on the collection of rent and termination of rightful eviction
27
28

1 processes. As a result of the Proclamations, Plaintiffs are unjustifiably
2 prevented from being able to rightfully use their properties and
3 mitigate damages where tenants fail to pay rent. At a minimum,
4 Plaintiffs aver that Plaintiffs should be able to continue to collect rent
5 from those tenants that are able to pay even a reasonable portion of the
6 total amount of rent due and owing, and should be allowed a forum to
7 contest a tenant's claim concerning qualifications for protections under
8 the Proclamations. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398,
9 445 (1934).

14 86. Because the Governor's decision in issuing the Proclamations was
15 made in reliance on procedurally deficient and substantively unlawful
16 processes, Plaintiffs were directly and proximately deprived of the
17 rightful use of their properties, and consequently, their ability to
18 lawfully operate their properties without unconstitutional government
19 overreach.

23 87. Because the Governor's decisions were made without regard to
24 the United States and Washington Constitutions, Plaintiffs were
25 directly and proximately deprived of their property rights absent
26

1 substantive due process of law, in violation of the Fourteenth
2 Amendment to the United States Constitution.
3

4 88. Plaintiffs have no adequate remedy at law and will suffer
5 continued serious and irreparable harm to their constitutional rights
6 unless the Defendant is enjoined from implementing and enforcing the
7 Eviction Moratorium in the Proclamations.
8

9
10 89. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
11 declaratory relief and temporary, preliminary, and permanent
12 injunctive relief invalidating and restraining enforcement of the
13 Proclamations.
14

15
16 90. Plaintiffs find it necessary to engage the services of private
17 counsel to vindicate its rights under the law. Plaintiffs are therefore
18 entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988.
19

20 **REQUESTED RELIEF**

21
22 WHEREFORE, Plaintiffs request that this Court:

23 1. Issue a declaratory judgment that the Proclamations are null and
24 void, and of no effect, as:
25

26 a. arbitrary and capricious, an abuse of discretion, or otherwise not
27 in accordance with the United States and/or Washington Constitutions
28

1 as violating of the Contracts Clauses of Article I, Section 10 and Article
2 I, Section 23 of the United States and Washington Constitutions;
3

4 b. unconstitutional under the Fifth Amendment;

5 c. unconstitutional under the Fourteenth Amendment;

6
7 d. a violation of 42 U.S.C. § 1983 as a deprivation of Plaintiff's
8 members' rights, privileges, and immunities secured by the United
9 States Constitution and/or laws of the United States.
10

11 2. Permanently enjoin the Governor and Attorney General and all
12 persons and entities in active concert or participation with them from
13 enforcing the Proclamations;
14

15 3. Award Plaintiff its costs and reasonable attorney's fees incurred in
16 this action pursuant to 42 U.S.C. § 1988 and other applicable law; and
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1 4. Grant all other such relief to Plaintiffs as the Court may deem
2 proper and just.
3

4 Dated this 29th day of October, 2020,
5

6 Stephens & Klinge LLP
7

8 /s/ Richard M. Stephens
9

10 WSBA No. 21776
11

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22 Attorneys for Plaintiffs
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Appendix A

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

**PROCLAMATION BY THE GOVERNOR
EXTENDING AND AMENDING 20-05, 20-19, et seq.**

20-19.4

Evictions and Related Housing Practices

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to broadly spread throughout Washington State; and

WHEREAS, the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many of our workforce expected to be impacted by these layoffs and substantially reduced work hours are anticipated to suffer economic hardship that will disproportionately affect low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, the inability to pay rent by these members of our workforce increases the likelihood of eviction from their homes, increasing the life, health and safety risks to a significant percentage of our people from the COVID-19 pandemic; and

WHEREAS, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act) residents seeking to avoid default judgment in eviction hearings need to appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, on May 29, 2020, in response to the COVID-19 pandemic, the Washington Supreme Court issued Amended Order No. 25700-B-626, and ordered that courts should begin to hear non-emergency civil matters. While appropriate and essential to the operation of our state justice system, the reopening of courts could lead to a wave of new eviction filings, hearings, and trials that risk overwhelming courts and resulting in a surge in eviction orders and corresponding housing loss statewide; and

WHEREAS, the Washington State Legislature has established a housing assistance program in RCW 43.185 pursuant to its findings in RCW 43.185.010 “that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs;” and

WHEREAS, it is critical to protect tenants and residents of traditional dwellings from homelessness, as well as those who have lawfully occupied or resided in less traditional dwelling situations for 14 days or more, whether or not documented in a lease, including but not limited to roommates who share a home; long-term care facilities; transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; and camping areas; and

WHEREAS, due to the impacts of the pandemic, individuals and families have had to move in with friends or family, and college students have had to return to their parents’ home, for example, and such residents should be protected from eviction even though they are not documented in a lease. However, this order is not intended to permit occupants introduced into a dwelling who are not listed on the lease to remain or hold over after the tenant(s) of record permanently vacate the dwelling (“holdover occupant”), unless the landlord, property owner, or property manager (collectively, “landlord”) has accepted partial or full payment of rent, including payment in the form of labor, from the holdover occupant, or has formally or informally acknowledged the existence of a landlord-tenant relationship with the holdover occupant; and

WHEREAS, a temporary moratorium on evictions and related actions throughout Washington State at this time will help reduce economic hardship and related life, health, and safety risks to those members of our workforce impacted by layoffs and substantially reduced work hours or who are otherwise unable to pay rent as a result of the COVID-19 pandemic; and

WHEREAS, hundreds of thousands of tenants in Washington are unable to pay their rent, reflecting the continued financial precariousness of many in the state. According to the unemployment information from the Washington State Employment Security Department website as of October 7, 2020, current data show there are more than six times as many people claiming unemployment benefits in Washington than there were a year ago, and almost 100,000 more people claiming unemployment benefits than at the peak of the Great Recession; and

WHEREAS, a temporary moratorium on evictions and related actions will reduce housing instability, enable residents to stay in their homes unless conducting essential activities, employment in essential business services, or otherwise engaged in permissible activities, and will promote public health and safety by reducing the progression of COVID-19 in Washington State; and

WHEREAS, I issued Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 (Stay Home – Stay Healthy), and I subsequently issued Proclamation 20-25.4 (“Safe Start – Stay Healthy” County-By-County Phased Reopening), wherein I amended and transitioned the previous proclamations’ “Stay Home – Stay Healthy” requirements to “Safe Start – Stay Healthy” requirements, prohibiting all people in Washington State from leaving their homes except under certain circumstances and limitations based on a phased reopening of counties as established in Proclamation 20-25.4, et seq., and according to the phase each county was subsequently assigned by the Secretary of Health; and

WHEREAS, when I issued Proclamation 20-25.4 on May 31, 2020, I ordered that, beginning on June 1, 2020, counties would be allowed to apply to the Department of Health to move forward to the next phase of reopening more business and other activities; and by July 2, 2020, a total of five counties were approved to move to a modified version of Phase 1, 17 counties were in Phase 2, and 17 counties were in Phase 3; and

WHEREAS, on July 2, 2020, due to the increased COVID-19 infection rates across the state, I ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place while I work with the Department of Health and other epidemiological experts to determine appropriate strategies to mitigate the recent increased spread of the virus, and those strategies may include dialing back business and other activities; and

WHEREAS, on July 23, 2020, in response to the statewide increased rates of infection, hospitalizations, and deaths, I announced an expansion of the Department of Health’s face covering requirements and several restrictions on activities where people tend to congregate; and

WHEREAS, when I issued Proclamation 20-19.3 on July 24, 2020, the Washington State Department of Health reported at least 51,849 confirmed cases of COVID-19 with 1,494 associated deaths; and today, as of October 11, 2020, there are at least 93,862 confirmed cases with 2,190 associated deaths; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health (DOH) continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Washington State Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-19, et seq., are amended to temporarily prohibit residential evictions and temporarily impose other related prohibitions statewide until 11:59 p.m. on December 31, 2020, as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, effective immediately and until 11:59 p.m. on December 31, 2020, I hereby prohibit the following activities related to residential dwellings and commercial rental properties in Washington State:

- Landlords, property owners, and property managers are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling or parcel of land occupied as a dwelling, including but not limited to an eviction notice, notice to pay or vacate, notice of unlawful detainer, notice of termination of rental, or notice to comply or vacate. This prohibition applies to tenancies or other housing arrangements that have expired or that will expire during the effective period of

this Proclamation. This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days' written notice of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury, and does not dispense landlords, property owners, or property managers from their notice obligations prior to entering the property, or from wearing face coverings, social distancing, and complying with all other COVID-19 safety measures upon entry, together with their guests and agents. Any eviction or termination of tenancy notice served under one of the above exceptions must independently comply with all applicable requirements under Washington law, and nothing in this paragraph waives those requirements.

- Landlords, property owners, and property managers are prohibited from seeking or enforcing, or threatening to seek or enforce, judicial eviction orders involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager (a) attaches an affidavit to the eviction or termination of tenancy notice attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) shows that at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Such a 60-day notice of intent to sell or personally occupy shall be in the form of an affidavit signed under penalty of perjury.
- Local law enforcement are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling or parcel of land occupied as a dwelling, unless the eviction order clearly states that it was issued based on a court's finding that (a) the individual(s) named in the eviction order is creating a significant and immediate risk to the health, safety, or property of others; or (b) at least 60 days' written notice were provided of the property owner's intent to (i) personally occupy the premises as the owner's primary residence, or (ii) sell the property. Local law enforcement may serve or otherwise act on eviction orders, including writs of restitution, that contain the findings required by this paragraph.
- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling or parcel of land occupied as a dwelling, and where such non-payment or late payment occurred on or after February 29, 2020, the date when a State of Emergency was proclaimed in all counties in Washington State.
- Landlords, property owners, and property managers are prohibited from assessing, or threatening to assess, rent or other charges related to a dwelling or parcel of land occupied as a dwelling for any period during which the resident's access to, or occupancy of, such dwelling was prevented as a result of the COVID-19 outbreak.

- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from treating any unpaid rent or other charges related to a dwelling or parcel of land occupied as a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was as a result of the COVID-19 outbreak and occurred on or after February 29, 2020, and during the State of Emergency proclaimed in all counties in Washington State. This includes attempts to collect, or threats to collect, through a collection agency, by filing an unlawful detainer or other judicial action, withholding any portion of a security deposit, billing or invoicing, reporting to credit bureaus, or by any other means. **This prohibition does not apply to a landlord, property owner, or property manager who demonstrates by a preponderance of the evidence to a court that the resident was offered, and refused or failed to comply with, a re-payment plan that was reasonable based on the individual financial, health, and other circumstances of that resident; failure to provide a reasonable re-payment plan shall be a defense to any lawsuit or other attempts to collect.**
- Nothing in this order precludes a landlord, property owner, or property manager from engaging in customary and routine communications with residents of a dwelling or parcel of land occupied as a dwelling. “Customary and routine” means communication practices that were in place prior to the issuance of Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a resident of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation without threatening eviction; or are otherwise consistent with this order. Within these communications and parameters, it is permissible for landlords, property owners and property managers to provide information to residents regarding financial resources, and to provide residents with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.
- Except as provided in this paragraph, landlords, property owners, and property managers are prohibited from increasing, or threatening to increase, the rate of rent for any dwelling or parcel of land occupied as a dwelling. This prohibition does not apply to a landlord, property owner, or property manager who provides (a) advance notice of a rent increase required by RCW 59.20.090(2) (Manufactured/Mobile Home Landlord-Tenant Act), or (b) notice of a rent increase specified by the terms of the existing lease, provided that (i) the noticed rent increase does not take effect until after the expiration of Proclamation 20-19.4, and any modification or extension thereof, and (ii) the notice is restricted to its limited purpose and does not contain any threatening or coercive language, including any language threatening eviction or describing unpaid rent or other charges. Unless expressly permitted in this or a subsequent order, under no circumstances may a rent increase go into effect while this Proclamation, or any extension thereof, is in effect. Except as provided below, this prohibition also applies to commercial rental property if the commercial tenant has been materially impacted by the COVID-19, whether personally impacted and is unable to work or whether the business itself was deemed non-essential pursuant to Proclamation 20-25 or otherwise lost staff or customers due to the COVID-19 outbreak. This prohibition does not apply to commercial rental property if rent increases were included in an existing lease agreement that was executed prior to February 29, 2020 (pre-COVID-19 state of emergency).

- Landlords, property owners, and property managers are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings. Nothing in this order prevents a landlord from seeking to engage in reasonable communications with tenants to explore re-payment plans in accordance with this order.
- The preceding prohibitions do not apply to operators of long-term care facilities licensed or certified by the Department of Social and Health Services to prevent them from taking action to appropriately, safely, and lawfully transfer or discharge a resident for health or safety reasons, or a change in payer source that the facility is unable to accept, in accordance with the laws and rules that apply to those facilities. Additionally, the above prohibition against increasing, or threatening to increase, the rate of rent for any dwelling does not apply to customary changes in the charges or fees for cost of care (such as charges for personal care, utilities, and other reasonable and customary operating expenses), or reasonable charges or fees related to COVID-19 (such as the costs of PPE and testing), as long as these charges or fees are outlined in the long-term care facility's notice of services and are applied in accordance with the laws and rules that apply to those facilities, including any advance notice requirement.

Terminology used in these prohibitions shall be understood by reference to Washington law, including but not limited to RCW 49.60, RCW 59.12, RCW 59.18, and RCW 59.20. For purposes of this Proclamation, a "significant and immediate risk to the health, safety, or property of others created by the resident" (a) is one that is described with particularity; (b) as it relates to "significant and immediate" risk to the health and safety of others, includes any behavior by a resident which is imminently hazardous to the physical safety of other persons on the premises (RCW 59.18.130 (8)(a)); (c) cannot be established on the basis of the resident's own health condition or disability; (d) excludes the situation in which a resident who may have been exposed to, or contracted, the COVID-19, or is following Department of Health guidelines regarding isolation or quarantine; and (e) excludes circumstances that are not urgent in nature, such as conditions that were known or knowable to the landlord, property owner, or property manager pre-COVID-19 but regarding which that entity took no action.

FURTHERMORE, it is the intent of this order to prevent a potential new devastating impact of the COVID-19 outbreak – that is, a wave of statewide homelessness that will impact every community in our state. To that end, this order further acknowledges, applauds, and reflects gratitude to the immeasurable contribution to the health and well-being of our communities and families made by the landlords, property owners, and property managers subject to this order.

ADDITIONALLY, I want to thank the vast majority of tenants who have continued to pay what they can, as soon as they can, to help support the people and the system that are supporting them through this crisis. The intent of Proclamation 20-19, et seq., is to provide relief to those individuals who have been impacted by the COVID-19 crisis. Landlords and tenants are expected to communicate in good faith with one another, and to work together, on the timing and terms of payment and repayment solutions that all parties will need in order to overcome the severe challenges that COVID-19 has imposed for landlords and tenants alike. I strongly

encourage landlords and tenants to avail themselves of the services offered at existing dispute resolution centers to come to agreement on payment and repayment solutions.

ADDITIONALLY, I want to thank the stakeholders and legislators who participated in the eviction moratorium workgroup with my executive senior policy advisors. The workgroup discussed a broad range of issues, and that discussion informed the modifications reflected in this order. I am directing my policy advisors to continue to work with stakeholders over the next 30 days to consider additional amendments to the moratorium to ensure that the moratorium's protections for non-payment of rent apply narrowly to those persons whose ability to pay has been directly or indirectly materially impacted by the COVID-19 virus.

MOREOVER, as Washington State begins to emerge from the current public health and economic crises, I recognize that courts, tenants, landlords, property owners, and property managers may desire additional direction concerning the specific parameters for reasonable repayment plans related to outstanding rent or fees. This is best addressed by legislation, and I invite the state Legislature to produce legislation as early as possible during their next session to address this issue. I stand ready to partner with our legislators as necessary and appropriate to ensure that the needed framework is passed into law.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 14th day of October, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

_____/s/_____
Jay Inslee, Governor

BY THE GOVERNOR:

_____/s/_____
Secretary of State